

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

MAKUEYAPPEE D. WHITFORD,  
Plaintiff,  
v.s.

Cause No.

CV-22-70-H-SEN

BRIAN GOOTKIN, Director  
of the Department of  
Corrections; JIM SALMON-  
SEN, Montana State  
Prison Warden,  
Defendants

Hon. Sam E. Haddon

Amended Verified  
Complaint for Viola-  
tion of Civil Rights

Jury Trial Demanded

Introduction

This is a civil rights action filed pro se by Makueyappee D. Whitford, a Montana State prisoner, for damages and relief under 42 U.S.C. § 1983, alleging violation of his Religious Freedom under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1.

I. The Parties to this Complaint

The Plaintiff

1. The plaintiff, Makueyappee D. Whitford, #3015941, ("Mr. Whitford"), at all times relevant to this complaint was confined by the Montana State Department of

Corrections ("DOC") at the Montana State Prison ("MSP") located at 700 Conley Lake Road, Deer Lodge, MT 59722. He is an outspoken prisoners rights activist.

### The Defendant's

2. The defendant Brian Groatkin, shield # unknown, is the Director of the entire Department of Corrections in Montana and employed by the State of Montana. His duties require that he sign off and review all policy in order for them to become Final, to oversee DOC Policy direction, and to ensure all facilities in Montana State submit MSP Procedures that are within the bounds of those policies. He is being sued in his official capacity. At all times relevant to this complaint he was acting under the color of state law as director of DOC.

3. The defendant, Jim Salmons, shield # unknown, is the Warden of the Montana State Prison and is employed by the Montana Department of Corrections at MSP located at 700 Conley Lake Road, Deer Lodge, MT 59722. His duties require that he sign off and review all MSP procedures in order for them to become Final, to

oversee procedure direction, and to ensure that the Montana State Prison Procedures are within the bounds of DOC Policy. He is being sued in his official capacity. At all times relevant to this complaint he was acting under the color of state law as the Warden of MSP.

## II. Basis For Jurisdiction

5. Mr Whitford is bringing his civil action against Montana DOC and MSP officials for deprivation of rights secured by the United States Constitution and Federal laws.

6. The Court has jurisdiction over plaintiff's claims of violation of Federal constitutional and statutory rights under 28 U.S.C. §1331 (1).

7. This civil action is filed against state actors for violations of the plaintiff's Religious Freedom under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §2000cc-1.

8. The defendants, DOC Director Brian Grotkin and MSP Warden Jim ~~Salmonson~~ Salmonsens were both acting under the color of state law at all times during the events described in this complaint.

### III. Prisoner status

9. The plaintiff is a prisoner who was convicted and sentenced in Lake County Montana as a state prisoner.

### IV. Statement of facts

10. On November 15<sup>th</sup>, 2021 at 1915 hours, Correctional Officer Teruel discovered a 14 inch piece of steel wrapped in napkins and paper towels and tied by a piece of string to Mr. Whitford's window. The weapon was outside in the Conex area between High Side Units 132, below Lower Delta Cell #5 in High Side Unit 1.

11. Mr. Whitford was the only individual living in Upper Delta #5 and it was automatically assumed that the weapon belonged to Mr. Whitford because it was tied to his window.

12. Mr. Whitford was arrested and escorted to the Restrictive Housing Unit on or around December 2nd, 2021 and placed on Administrative Segregation status pending investigation.

13. On December 8<sup>th</sup>, 2021, Mr. Whitford was formally charged with a disciplinary infraction. Infraction #4102 - Possession of a weapon.

14. Mr. Whitford prepared a 4 page

statement to the disciplinary hearings officer as best as he could in preparation for his disciplinary hearing.

15. Mr. Whitford was eventually called out for his disciplinary hearing which he attended. At that hearing he explained his grounds for dismissal of the infraction.

16. Among those grounds he brought up the fact that the 6-month infraction free stipulation on his religious activity was illegal.

17. The Disciplinary Hearings Officer disregarded Mr. Whitford's response and ~~found~~ found Mr. Whitford guilty of possession of a weapon. Ordering Mr. Whitford 30 days of detention.

18. On December 15<sup>th</sup>, 2021, Mr. Whitford submitted a Disciplinary Appeal to the Warden. In his appeal he reiterated everything at his hearing and asked that the Warden review the record. He brought up the fact that the six-month infraction free stipulation violated his religious rights and asked for a dismissal.

19. Mr. Whitford asked for the Warden to review the record, OSR's, and recording of the hearing. His appeal was affirmed, January 13<sup>th</sup>, 2022.

19. In addition to the 30 days of detention, Mr. Whitford was restricted



from practicing certain aspects of his religion for a 6-month period, as a by-product punishment of the major infraction that he received.

20. The religious activities that are affected by the 6-month infraction Free stipulation include Drum Group, sweat set-up, the ability to be elected Pipe carrier in order to hold the pipe carrier position, and the ability to be present and to participate in the Annual Spiritual Gathering (A.k.a. Powwow).

#### V Statement of claims

Violation of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000c-1.

21. Mr. Whitford is an American Indian and practices the Ojibwa religion of the Blackfeet Nation as well as the general religious principals of all Native American people.

22. These principals include the right to be able to carry a pipe and to act as community pipe carrier if so elected.

23. The sacred pipe is a central tenet of all American Indian people and is considered the primary

means of communication with the Great Spirit (A.K.A. Great Mystery).

24. Mr. Whitford contends he has the right to carry a personal pipe as well as the right to be elected as the communal pipe carrier if the people so choose.

25. Mr. Whitford is a pipe holder and has his own medicine pipe on the streets.

26. American Indian principals of religion also include the ability to be part of the Drum Group or a Drum Group.

27. The Powwow drum, is a big drum that usually consists of six to twelve individuals or more in order to keep the drum beat of the people (A.K.A. The heartbeat of the people).

28. The heart beat of the people is said to be the primary beat of the spirit of the American Indian people. In fact, it is often said that if the drum beat dies, the people will die because there will be nobody left to keep it going.

29. Because of this reason the individuals who drum and sing are considered the primary keepers of the drum beat.

30. This refers strictly to the

big powwow drums which are used in spiritual Gatherings (A.K.A. Powwows), as opposed to hand drums which are small individual drums made for a single person.

31. Mr. Whitford is a Powwow singer and drummer and contends that he has a right to drum and sing.

32. The sweat set-up crew consists of individuals, usually four or five people, who prepare the sweat and get it ready for use, including but not limited to starting the fire.

33. The Pipe Carrier is the primary person who directs sweat set-up along with the "Road Man" (i.e., the person who is going to run the sweat on that particular day.)

34. Mr. Whitford contends that he has the right to be Pipe Carrier and Road Man and to be selected by them in order to attend sweat-set up and to be a part of the sweat-set up crew.

35. The most and perhaps the most well known ceremony of the American Indian people, other than the Sundance, is the Powwow/Spiritual Gathering.

36. The Spiritual Gathering brings together Native American people in a gathering of thanksgiving, joy, and happiness. It is the primary unifying force of Native American



people and therefore a major central tenet of the Native American people.

37. These four activities (i.e., Pipe Carrier, Drum Group, Sweet Set-Up, and Spiritual Gatherings) are restricted for 6 months at a time whenever someone who practices the Native American way of life are infraacted with a major infraction and found guilty of committing that infraction regardless of due process.

38. Mr. Whitford was infraacted for possession of a weapon which is considered a major infraction and thus was restricted from practicing these specific tenets of his religion for 6 months; although, he never violated those ceremonial activities and even though the infraction was unrelated to the ceremonial activities being restricted.

39. Mr. Whitford has been involved in the Native American way of life. He has been a legal, ethical, and religious champion of the oppressions committed against Native American rights since he entered MSP. He has and continues to challenge the status quo in regards to American Indian traditions, beliefs,

culture in the person. Therefore, his sincerity should not be a question.

40. He is sincere about his beliefs as they relate to the four religious activities above.

41. There is no question that the prison system have a legitimate penological concern in maintaining a secure facility.

42. However, the 6-month-infraction-free-stipulation is illogical, unethical, and arbitrary as it relates to the religious activities above.

43. The number one reason that it is arbitrary and irrational is because it allows overlybroad discretion to prison officials who may have ulterior motives and who may want to ensure that Native American inmates are not able to participate in some of these beloved ceremonies. whether for retaliatory ~~purposes~~ purposes, racist purposes, or otherwise.

43. The next reason that makes it arbitrary and illogical is that Native American's who have not violated the ceremonies themselves and who are infraacted for reasons unrelated to the ceremonial functions are punished regardless of whether or not there is a connection between

infraction and the ceremonial function. If the infraction actually happen in connection with the ceremonial function it would make more sense, but it doesn't.

44. The third and final reason that it is arbitrary and illogical is because the U.S. Constitution implies that no person shall be punished for practicing their religion and that there should be free exercise thereof.

45. This concept should be applied to include restricting people from practicing their religion for 6 months every time that they get an unrelated infraction.

46. There are alternative means of practicing the Native American religion as a whole. Inmates are still allowed to go to sweats and pipe ceremonies, they are allowed to drum on handdrums at sweat (and only have enough time for that), they are still allowed to smoke the pipe.

47. But, they are not allowed to participate in specifics in relation to those central tenets such as drumming and singing at the spiritual gatherings or otherwise participate in spiritual gatherings by dancing or observing. They are not allowed to sing and

drum on the big drum which have different songs than songs sung on hand drums and songs meant for sweat ceremonies, or other purposes. They are not allowed to carry the pipe for communal reasons even if the people want them elected for their specialized spiritual knowledge or to participate in sweat set-ups as a Road Man or Pipe Carrier.

48. The impact that these rights have on inmates and guards are minimal at best. All of the religious functions described above are already in practice, only not everyone is able to attend the way they should be. In the spiritual gathering and sweat set-up, there are limited amounts of individuals who can even attend.

49. The number one ready alternative to the 6 month infraction free stipulation would be to apply it only to those who are found guilty of an infraction that is actually related to one of those ceremonial activities. Instead of punishing people first and asking questions later, there should be an inquiry as to whether or not the infraction was committed at one of these

ceremonial functions and if the infraction violated institutional conduct that actually has a bearing on the ~~religious~~ religious function. Such as bringing in drugs in the visiting room. To have a spiritual gathering, it has to be in the visiting room. Therefore the prohibited conduct has a rational connection to the visiting room where the spiritual gathering will be held. But if it doesn't have a bearing on the visiting room or ceremonial function being held in the visiting area, or otherwise, then it should not be prohibited. When entering the visiting room on a normal basis and not during a spiritual gathering, everyone is allowed to go to their visits regardless of whether there is an infraction within the last 6 months or not. Only when someone violates visiting room policy are they restricted from the visiting room. So why are spiritual gatherings different when they should be the same?

§0. Therefore, there is no reasonable penological interest in this 6 month infraction free stipulation being applied to each and every major infraction and the regulation itself impinges on the plaintiff's constitutional



right under the Religious Land Use and Institutionalized Persons Act.

51. The state action in this incident has created a substantial burden on the plaintiff First Amendment religious rights by restricting him from participating in the 4 activities described above for 6 months because of a rule violation and infraction unrelated to those activities and that has absolutely no bearing on them or how they are performed.

52. As stated above, it isn't the least restrictive means available to prison officials and they can afford to wait until the plaintiff actually violates a rule and receives an infraction that actually does have a bearing on the religious exercise before punishing him. Instead of punishing him for unrelated activities.

53. The plaintiff doesn't argue that it is not in the furtherance of a compelling governmental interest, only that it is illogical, irrational, arbitrary, and that it is not the least restrictive means available.

## VI INJURIES

54. The plaintiff's right to freely practice his religion regarding four primary religious tenets was restricted for a 6 month period.

55. Each additional Major Infraction that the plaintiff receives in the future will result in his right to freely practice his religion regarding these four primary religious tenets will be restricted for a 6 month period.

56. No physical injury resulted.

## VII REQUESTED RELIEF

Wherefore the plaintiff requests this Court to grant the following relief:

57. A declaration declaring that the practice of utilizing a 6 month infraction free stipulation regarding major infractions that are unrelated

and that bear no relation to the following religious activities - Pipe Carrier - Sweet Set-Up - Drum Group - and spiritual Gatherings ... violate the plaintiff's rights under RLUIPA.

58. Award compensatory damages for the time it took for plaintiff to challenge the results of his disciplinary hearing and the 6 month period that the plaintiff was restricted from participating in his religious activities.

59. Award punitive damages for the time that plaintiff was restricted from participating in his religious activities and for using his religion as punishment.

60. Grant a temporary restraining order preventing the use of the 6 month infraction free stipulation in relation to the activities of Pipe Carrier, Sweet Set-Up, Drum Group, and spiritual gathering as well

as a notice to the general population of that fact.

61. Grant permanent, mandatory, and prohibitory injunction preventing any further use of the 6 month Infraction Free stipulation in relation to the activities of Pipe Carrier, Sweet set-up, Drum Group, and spiritual Gatherings regarding infractions that have no direct bearing on those activities; Notice general population of that fact; and, initiate revisions of policy and procedure at DOC and MSP that coincide with injunction.

62. Grant a re-hearing or in the alternative dismiss the major infraction through permanent mandatory injunction and prohibit future violations of the same.

### VIII EXHAUSTION OF REMEDIES

63. The plaintiffs claims arose at the Montana State Prison.

64. Montana State Prison does have a grievance procedure and a disciplinary appeal process.

65. The grievance system covered some of the claims but most of the claims were covered by the disciplinary appeal process.

66. Policy issues are grievable and therefore the 6 month infraction free stipulation was grievable.

67. The plaintiff utilized the disciplinary appeal process regarding the facts of this case, but has also grieved the 6 month infraction free stipulation in general using the grievance process in the past.

68. The grievances and disciplinary appeal process was filed at MSP and claimed essentially the same things as stated above in the statement of claims.

69. The plaintiff brought the Freedom of religion claims to both the attention of the disciplinary



officer and the MSP warden during the disciplinary hearing and appeal processes. The plaintiff also grieved the 6 month infraction free stipulation in the past.

70. The plaintiff has brought these and similar claims to prison officials in the past, all the way till the present, and has grieved or appealed disciplinary ~~after~~ decisions in an attempt to inform the entire MSP officials to no avail. His grievances and appeals have fallen on ~~deaf~~ deaf ears for years now and his attempts to document these types of issues in a systematic fashion encompasses hundreds if not thousands of pages of documentation. His activism has been relentless.

#### IX PREVIOUS LAWSUITS

71. The plaintiff has never to his knowledge had a lawsuit dismissed

based on the "three strikes rule" of 28 U.S.C. §1915(g).

22. The plaintiff has never filed any other suits with the same facts involved in this case.

23. The plaintiff has filed one suit (Cause No. 6:20-CV-00080-SEH) that involved similar issues but this is based on different circumstances. That case was filed against Redignald N. Michael. That case is on appeal to the 9th Cir. It was dismissed with prejudice after the plaintiff failed to Amend within a certain time frame which the plaintiff disputes.

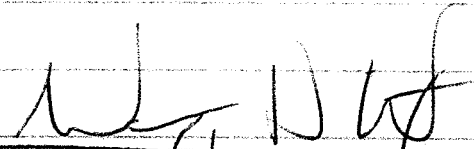
24. The plaintiff has filed one other lawsuit besides the one mentioned in paragraph 23. Cause No. 6:22-CV-00012-SEH. That lawsuit is against Robert Orino. All of these cases mentioned are in the US Dist. Court, Div. of Helena

## X Certification & Closing

75. Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the ~~presented~~ factual contentions have evidentiary support, or if specifically so identified, will likely have evidentiary support, ~~or if specifically~~ after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Signature & Address

76. Signed this 5<sup>th</sup> day of January,  
2023.

Signed   
Makneeyapee D. Whitford  
#3015941  
Montana State Prison  
700 Conley Lake Rd.  
Deer Lodge, MT 59722

### VERIFICATION

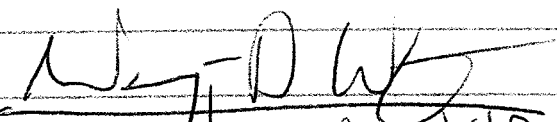
State of Montana }  
County of Powell } Affidavit of Makneeyapee  
D. Whitford

77. Mr. Whitford, Makneeyapee D.  
being first duly sworn, deposes and  
says:

78. That I am the affiant  
in this civil rights complaint

For civil rights violations above  
and do hereby declare and  
swear that the facts stated  
in that document are true  
and correct to my knowledge  
and belief, and facts stated  
on information and belief are  
true and correct to my knowledge  
and belief.

Done this — day of January,  
2023.

Signed   
Makmura D. Whitford  
#3015541

[Notary Public]

Montana State Prison  
700 Conley Lake Rd  
Deer Lodge, MT 59722

Note: 25 Pages of Documentation  
attached in order to supplement  
the record